

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**KEITH D. RUDOLPH,**

**Plaintiff,**

**vs.**

**MOBIS ALABAMA, LLC,**

**Defendant.**

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**Civil Action No.: 2:06-CV-994-ID**

**MOTION TO DISMISS FOR WANT OF PROSECUTION,  
OR IN THE ALTERNATIVE, FOR REASSIGNMENT TO A  
MAGISTRATE JUDGE AS *PRO SE* LITIGATION**

COMES NOW the Defendant, **MOBIS Alabama, LLC, and (“MOBIS”)** and moves the Court to dismiss this case for want of prosecution, or in the alternative to reassign it to a magistrate judge. As grounds, MOBIS shows the Court the following:

1. Plaintiff Keith Rudolph (“Plaintiff”) filed this action on November 2, 2006.
2. Thereafter the parties exchanged initial disclosures pursuant to Rule 26 Fed. R. Civ. P. and conducted written discovery.
3. On August 17, 2007, Rudolph’s counsel David Arendall, Esquire and Allen Arnold, Esquire filed a Motion for Leave to Withdraw. (Doc. No. 15)
4. On August 1, 2007, this Court granted Mr. Arendall’s and Mr. Arnold’s Motion to Withdraw. In that Order (Doc. No. 17), the Court established September 25, 2007, as the deadline for Plaintiff to retain new counsel, or enter an appearance *pro se*.
5. Plaintiff failed to comply with the Court’s Order.

6. After the September 25, 2007, deadline expired without action on the Plaintiff's part, the undersigned counsel for MOBIS initiated written and telephonic communications with Plaintiff in an effort to resume discovery and trial preparation. (See Exhibits "1" and "2".)

7. Pursuant to those communications, MOBIS' counsel and Plaintiff have spoken several times by telephone and had one (1) face to face meeting at the undersigned's office.

8. Recently, Plaintiff failed to appear at three (3) consecutive appointments with MOBIS' counsel.

9. MOBIS submits that it has done all within reason to accommodate Plaintiff's lack of legal representation. MOBIS further submits that Plaintiff is apparently no longer willing or able to cooperate with MOBIS' counsel.

10. This case is scheduled for trial on June 23, 2008, and MOBIS faces a dispositive motion cutoff of February 12, 2008.

**WHEREFORE THE PREMISES CONSIDERED**, MOBIS moves the Court for an Order dismissing this case for want of prosecution, or in the alternative, reassigning this case to a Magistrate Judge for prosecution as a *pro se* case in accordance with this District's customary practices for such cases.

Respectfully submitted this 14th day of December 2007.

/s/Henry C. Barnett, Jr.  
HENRY C. BARNETT, JR. (BAR037)

*ATTORNEY FOR MOBIS ALABAMA, LLC*

**OF COUNSEL:**

CAPELL & HOWARD, P. C.  
150 South Perry Street  
Post Office Box 2069  
Montgomery, AL 36102  
Telephone: (334) 241-8059  
Facsimile: (334) 323-8888

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of December 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following, a copy was also sent Via U.S. Mail to the address below:

Mr. Keith Rudolph  
3358 Rudolph Road  
Tyler, Al 36785

/s/Henry C. Barnett, Jr.  
OF COUNSEL

**CAPELL & HOWARD**  
ATTORNEYS AT LAW

FRANK L. McFARLANE  
JAMES K. McFARLANE  
WILLIAM D. McFARLANE  
WILLIAM K. McFARLANE  
GEORGE C. McFARLANE  
BRYCE A. McFARLANE  
DENISE C. McFARLANE  
K. PAUL McFARLANE  
ROBERT C. McFARLANE  
DENISE L. McFARLANE  
NICHOLE L. McFARLANE  
D. KYLE McFARLANE  
ROBERT E. McFARLANE

FRANK L. McFARLANE  
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D. KYLE McFARLANE  
ROBERT E. McFARLANE

November 12, 2007

Mr. Keith Rudolph  
3358 Rudolph Road  
Tyler, AL 36785

**Re: Keith D. Rudolph v. MOBIS Alabama, LLC**  
**U.S. District Court for the Middle District of Alabama, Northern Div.**  
**Case No.: 2:06cv994-ID**

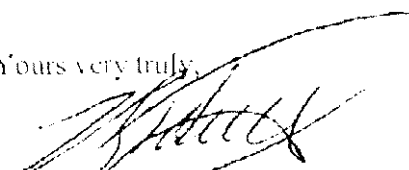
Dear Mr. Rudolph:

This firm represents MOBIS Alabama, LLC in the above referenced lawsuit, which you filed on November 2, 2006.

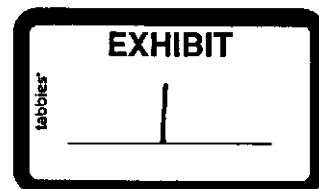
On August 21, 2007, United States District Judge Ira DeMent issued an Order allowing your attorney, David Arendall, Esq., to withdraw and requiring you to find new counsel and have such counsel make an appearance in this case no later than September 25, 2007. In the alternative, the Court gave you until September 25, 2007 to make an appearance in this case *pro se* (meaning that you will be representing yourself, without a lawyer).

As of today, no lawyer has made an appearance on your behalf, and you have not appeared *pro se*. The September 25, 2007 deadline established by the Court has long since passed so I am assuming that you no longer intend to pursue this case. Whether or not you intend to pursue the case, I ask that you please give me a call at 241-8059 at your earliest convenience so that we may discuss this matter and agree on how to proceed from here.

Yours very truly,

  
Henry C. Barnett, Jr.

HCB/as  
Enclosure



MONTGOMERY • GADSDEN • AUBURN

150 SOUTH PERRY STREET, BOX 600, POST OFFICE BOX 1000, MONTGOMERY, ALABAMA 36102-2000  
334-241-8000 ext. 334-241-8000 fax 334-241-8000 www.capecapelland.com

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STEPHEN J. ANDERSON  
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ROBERT J. NORRIS, JR.

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CASSIUS H. STELMORE  
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DEBRA S. FLORENCE  
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J. SCOTT HARTLEY  
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JOHN J. GUN  
GEORGE W. JOHNSON  
GLENN SHELLEY  
JAMES M. SCOTT  
THOMAS A. WATSON, JR.

November 20, 2007

Mr. Keith Rudolph  
3358 Rudolph Road  
Tyler, AL 36785

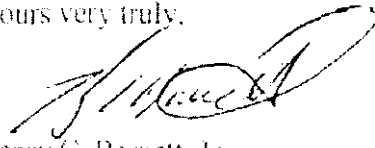
**Re: Keith D. Rudolph v. MOBIS Alabama, LLC**  
**U.S. District Court for the Middle District of Alabama, Northern Div.**  
**Case No.: 2:06cv994-ID**

Dear Mr. Rudolph:

On November 12, 2007, I wrote you inquiring about your intentions for going forward with your case against MOBIS. You have not responded to my letter.

Please be advised that if I do not hear from you within ten (10) days of the date of this letter, I will file a motion with the Court to have the case dismissed for lack of prosecution. Again, I emphasize that I am available to discuss the case with you irrespective of whether you decide to proceed or drop the case. My direct dial telephone number in Montgomery is 334-241-8059.

Yours very truly,

  
Henry C. Barnett, Jr.

HCB/as



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